In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 72-1555

IRA SYLVESTER GODFROY, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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1. During the first half of the 19th Century, the Miami Tribe of Indians ceded some fourteen reservations of land in Northern and Central Indiana to the United States through a series of treaties (Pet. App. C, p. 35). Over the succeeding years the Tribe divided into two groups, the Miami Tribe of Indiana and the Miami Tribe of Oklahoma. After the enactment of the Indian Claims Commission Act (25 U.S.C. 70), each of the groups hired attorneys and brought claims under the Act against the United States for additional compensation for the land ceded by the original Tribe (Pet. App. D, pp. 59-60). The Indian Claims Commission decided in *Miami Tribe* v. *United States,* 17 Ind. Cl. Comm. 427, that neither group was the full successor to the original *Miami Tribe* but that both were entitled to represent it in bringing these claims.

The claims involved in this litigation were settled for a total of $1,439,966 and judgments were entered according-

ly (Pet. App. D, p. 60). The judgments did not, however, apportion the funds among the two groups, and Congress subsequently specified that the funds should be distributed equally to the decendants of the original members of the Miami Tribe without regard to their membership in the Oklahoma or Indiana group (Act of June 2, 1972, 86 Stat. 199, Pet. App. B; see also Act of October 14, 1966, 80 Stat. 909, referred to in the later Act). Because of disputes concerning the roll of such members, the fund has not yet been distributed.

The present litigation, while nominally against the United States, is in fact a dispute between the attorneys who represented the two branches of the Tribe as to the proper distribution of attorneys' fees (see Pet. 2-3). The maximum attorneys' fee allowed by the Indians Claims Commission Act is 10 percent of the amount recovered (25 U.S.C. 70n; see Pet. 3). Here the Commission allowed the maximum fee for the total award to the Miami Tribe, $143,996,60 (Pet. App. D, pp. 60-61). The lawyers, however, were unable to agree to a division of the fee between them, and on their application, the Commission divided the fees in accordance with what it found to be the relative contribution of each set of lawyers. The Commission awarded 70 percent of the fee to the lawyers for the Oklahoma group who it found were largely responsible for the recovery, and awarded 30 percent to the lawyers for the Indiana group (Pet. App. A, pp. 19-20; see also Pet. App. D, pp. 64-66). The Court of Claims, in a comprehensive opinion, has upheld this determination (Pet. App. D).

2. There is no need for further review. The situation before the Court of Claims was an unusual one (see Pet. App. D, pp. 61-62) and since the Indian Claims Commission can no longer hear new claims (25 U.S.C. 70k) and is to be dissolved by April 10, 1977 (25 U.S.C. 70v, as amended

March 30, 1972, 86 Stat. 114), it is unlikely that the situation will arise again. Moreover, the petition does not challenge the authority of the Commission to award attorneys fees between attorneys competing for the same general fee, but merely challenges the distribution arrived at by the Commission (before which the work was done) and upheld by the Court of Claims.

3. Judge Skelton, dissenting on the second motion for rehearing (Pet. App. E), suggests that the result of the Court of Claims' decision will go beyond the distribution of fees to the attorneys and will require the smaller group of Miami Indians, those living in Oklahoma, to bear the burden of the larger fee awarded to their attorneys and thus will discriminate against the Oklahoma Miami Indians. This issue is not presented in the petition;[1] moreover, in our view, this fear is unfounded. Congress, in the Act of June 2, 1972 (Pet. App. B) provided for the *per capita* distribution of the fund created by these settlements among all descendants of Miami Indians whether of the Oklahoma or Indiana branches "after payment of attorney fees and litigation expenses * * *" (*id.*, Sec. 1). The fund to be distributed is thus the fund after payment of fees and expenses. When the fund is distributed each member of the combined roll will receive an equal portion as required by Congress. Thus the dispute here is restricted to that between the attorneys as to the division of the

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[1] Petitioners do not suggest that the awards to the individual tribe members will be unequal but suggest that their fees should be based solely on the total awards to the group they represent. Thus, under the theory urged by petitioners, although the Commission found that the attorneys for the Oklahoma group did the bulk of the work, the petitioners, who are attorneys for the larger Indiana group, would receive most of the fee.

total 10 percent attorneys' fee. This dispute in our view does not warrant further review.

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

AUGUST 1973.